

notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

[45 FR 48120, July 18, 1980, as amended at 51 FR 13493, Apr. 21, 1986; 58 FR 52912, Oct. 13, 1993]

§ 416.350 Treating a title II application as an oral inquiry about SSI benefits.

(a) When a person applies for benefits under title II (retirement, survivors, or disability benefits) we will explain the requirements for receiving SSI benefits and give the person a chance to file an application for them if—

(1) The person is within 2 months of age 65 or older or it looks as if the person might qualify as a blind or disabled person, and

(2) It is not clear that the person's title II benefits would prevent him or her from receiving SSI or any State supplementary benefits handled by the Social Security Administration.

(b) If the person applying for title II benefits does not file an application for SSI on a prescribed form when SSI is explained to him or her, we will treat his or her filing of an application for title II benefits as an oral inquiry about SSI, and the date of the title II application form may be used to establish the SSI application date if the requirements of § 416.345 (d) and (e) are met.

DEEMED FILING DATE BASED ON MISINFORMATION

§ 416.351 Deemed filing date in a case of misinformation.

(a) *General.* You may have considered applying for SSI benefits for yourself or for another person, and you may have contacted us in writing, by telephone or in person to inquire about filing an application for these benefits. It is possible that in responding to your inquiry, we may have given you misinformation about your eligibility for such benefits, or the eligibility of the

person on whose behalf you were considering applying for benefits, which caused you not to file an application at that time. If this happened, and later an application for such benefits is filed with us, we may establish an earlier filing date under this section.

Example 1: Ms. Jones calls a Social Security office to inquire about filing an application for SSI benefits. During her conversation with an SSA employee, she tells the employee about her resources. The SSA employee tells Ms. Jones that because her countable resources are above the allowable limit, she would be ineligible for SSI benefits. The employee fails to consider certain resource exclusions under the SSI program which would have reduced Ms. Jones' countable resources below the allowable limit, making her eligible for benefits. Because Ms. Jones thought that she would be ineligible, she decides not to file an application for SSI benefits. Ms. Jones later reads about resource exclusions under the SSI program. She recontacts the Social Security office to file an SSI application, and alleges that she had been previously misinformed about her eligibility for SSI benefits. She files an application for SSI benefits, provides the information required under paragraph (f) of this section to show that an SSA employee provided misinformation, and requests a deemed filing date based upon her receipt of misinformation.

Example 2: Mr. Adams resides in a State which provides State supplementary payments that are administered by SSA under the SSI program. He telephones a Social Security office and tells an SSA employee that he does not have enough income to live on and wants to file for SSI benefits. Mr. Adams states that his only income is his monthly Social Security benefit check. The SSA employee checks Mr. Adams' Social Security record and advises him that he is ineligible for SSI benefits based on the amount of his monthly Social Security benefit. The employee does not consider whether Mr. Adams would be eligible for State supplementary payments. Because Mr. Adams was told that he would not be eligible for benefits under the SSI program, he does not file an application. The employee does not make a record of Mr. Adams' oral inquiry or take any other action. A year later, Mr. Adams speaks to a neighbor who receives the same Social Security benefit amount that Mr. Adams does, but also receives payments under the SSI program. Thinking the law may have changed, Mr. Adams recontacts a Social Security office and learns from an SSA employee that he would be eligible for State supplementary payments under the SSI program and that he could have received these payments earlier had he filed an application.